



DEPARTMENT OF THE NAVY
NAVSUP FLEET LOGISTICS CENTER NORFOLK
1968 GILBERT STREET SUITE 600
NORFOLK VA 23511-3392

IN REPLY REFER TO
J&A Number 11-078

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

1. **Contracting Activity.** The requiring activity is the Office of General Counsel (OGC); Navy Litigation Office, 720 Kennon Street SE, Bldg 36, Room 233, Washington, DC 20374. The contracting activity is the NAVSUP Fleet Logistics Center Norfolk Contracting Department; 700 Robbins Ave. Bldg 2B, Philadelphia, PA 19111-5083.

2. **Description of the Action Being Approved.** Award of a Three (3) month Bridge Contract to Avaya Government Solutions of Fairfax, VA, as a continuation of the services currently being performed under expiring GSA Schedule order number W91CRB-06-F-0243 for Iran Litigation Services in support of the Office of General Counsel is anticipated. Services are required during the period from 26 September 2011 to 31 December 2011.

3. **Description of Supplies/Services.** The Navy Litigation Office in the Office of the General Counsel (OGC) has an urgent need to continue to provide specialized litigation support services for the defense of claims pending before the Iran-U.S. Claims Tribunal at The Hague, Netherlands. The purpose of this request is to extend the period of performance in order to continue uninterrupted litigation support services currently being performed by Avaya Government Solutions. This litigation support contract provides professional, administrative and technical services necessary to assist the Navy and Department of State in defending the Iranian claims. The contractor performs a variety of critical tasks and efforts associated with Iran's former Foreign Military Sales program, including locating and analyzing evidence; reconciling and explaining complex billing issues; managing and accounting for millions of electronic and hard copy documents; conveying historical knowledge, information, and practices to Navy and State Department personnel; and responding to a wide variety of tasks stemming from decisions and orders from the Iran-U.S. Claims Tribunal. In order to effectively address the myriad of issues at hand, the contract requires personnel resources who possess detailed knowledge of how the Navy Foreign Military Sales programs were managed and executed in the 1970's and 80's. The total estimated dollar value of the contract extension is \$1,309,742.00, which will be funded by FY11 Operations and Maintenance Navy (O&MN) appropriation dollars.

4. **Statutory Authority Permitting Other Than Full and Open Competition.** The statutory authority permitting other than full and open competition is 10 U.S.C. 2304(c) (1), One source or limited sources.

5. **Rationale Justifying Use of Cited Statutory Authority.** The current order for the Iranian litigation support services was awarded to Avaya Government Solutions (formerly Nortel Government Solutions) in September 2006. The final option under the contract expires on 25 September 2011. The competitive follow on procurement is currently in the proposal evaluation process. The estimated award date is not expected until December 2011. It is not feasible to perform a proper evaluation and make an award by 26 September. In order for present deadlines to be met with no interruption in services to the Navy and our client partner, the Department of State, it is required that the current order be extended.

Avaya Government Solutions has performed the services for this contract over the last five years. The contractor currently provides litigation support to assist the Navy and Department of State in finalizing their factual arguments and evidentiary backup, including reviewing the written briefs and evidence for accuracy prior to the final product being filed with the Iran-U.S. Claims Tribunal in early 2012. Due to the upcoming filing, the next six months will be particularly critical in ensuring deadlines are met and potential U.S. liability to Iran is eliminated or kept to a minimum.

Due to the nature of this litigation effort, and the timing associated with completing critical tasks, Avaya Government Solutions is the only contractor who can provide the required services, without interruption, starting on 26 September 2011. Avaya already has a staff of fully capable individuals in place with the proper credentials and training to effectively meet the upcoming deadlines. A vigorous defense of these claims is essential to avert an

adverse judgment that would be extraordinarily costly to the United States in political as well as financial terms. Potential liability for the Navy portion of this legal dispute amounts to over \$13.4B including interest. As noted above, a competitive follow-on requirement is being processed. There is not sufficient time available properly evaluate proposals, perform a new source selection, and conduct an orderly transition before the current order expires. This sole source action is only to allow for those events to take place.

6. Description of Efforts Made to Solicit Offers from as many Offerors as Practicable. While the long-term, follow-on procurement will be competitive in nature, it cannot be accomplished within the time frame required to avoid a break in services. Therefore, a sole source Bridge Contract of 3- months will provide the Government with the adequate time to conduct and award a competitive long-term follow-on procurement. It is not practicable for any other contractor, other than the incumbent, to perform this Bridge contract requirement.

As required by FAR 5.201, a synopsis of the proposed Bridge Contract action was issued on 21 July 2011 via the Navy Electronic Commerce Online (NECO) website. This synopsis announced the Government's intent to solicit on a sole source basis a 3- month Bridge Contract with incumbent contract, Avaya Government Solutions, to avoid a break in services. The synopsis further indicated the Government's intent to proceed with a long-term competitive follow-on procurement, to commence following the conclusion of this Bridge Contract. This subsequent competitive action was synopsisized 4 November 2010 via the NECO website. No challenges were received to this course of action.

7. Determination of Fair and Reasonable Cost/Price. The FLC Norfolk Contracting Department, Contracting Officer will determine whether the price negotiated for this acquisition is fair and reasonable pursuant to FAR, Part 15.

8. Actions to Remove Barriers to Future Competition. Market research conducted for the follow-on competitive procurement indicates other sources have the potential capability to provide the required services. However, for the short notice and duration of this bridge contract, no other contractor could provide adequate numbers of experienced personnel as well as suitable facilities and equipment to meet the near-term needs of this critically important litigation. Therefore, sound business judgment indicates that extension of the current order is in the best interest of the Navy.

9. Contracting Point Of Contact. The point of contact at FLC Norfolk Contracting Department, is Ms. Stephanie Proko at 215-697-9646.

CERTIFICATIONS AND APPROVAL

TECHNICAL/REQUIREMENTS CERTIFICATION

I certify that the facts and representations under my cognizance which are included in this Justification and its supporting acquisition planning documents, except as noted herein, are complete and accurate to the best of my knowledge and belief.

Technical Cognizance:

Gregory A. Schultz GREGORY A. SCHULTZ 202-685-7035 16 AUG 2011
Signature Name (Printed) Phone No. Date

Requirements Cognizance:

Ronald J. Barro RONALD J. BARRO 202-685-6289 16 AUG 2011
Signature Name (Printed) Phone No. Date

(Note that this page includes certification that the acquisition planning documents are complete and accurate.)

(If a single individual has cognizance over both technical and requirements information included in the J&A, use of only one signature line is encouraged ["Technical Cognizance:" and Requirements Cognizance:" may also be deleted]).

LEGAL SUFFICIENCY REVIEW

I have determined this Justification is legally sufficient.

Diane M. Caron DIANE M. CARON 215 697 9568 18 AUG 2011
Signature Name (Printed) Phone No. Date

CONTRACTING OFFICER CERTIFICATION (\$100K - \$550K)

I certify that this Justification is accurate and complete to the best of my knowledge and belief.

K. Bullock K. Bullock 215-697-9640 8/17/11
Signature Name (Printed) Phone No. Date

CONTRACTING ACTIVITY COMPETITION ADVOCATE APPROVAL (\$550K - \$11.5M)

Rene S. Shaw Rene S. Shaw 8/17/11
Signature Name (Printed) Phone No. Date